

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF THE
MARSHALL ISLANDS
CONCERNING
COOPERATION IN MARITIME SURVEILLANCE AND
INTERDICTION ACTIVITIES**

The Government of the United States of America and the Government of the Republic of the Marshall Islands (hereinafter, "the Parties");

Bearing in mind the special nature of the problem of detecting illegal activity at sea such as fisheries offences, illicit maritime drug traffic, and illegal migration;

Desiring to promote greater cooperation between the Parties, and thereby enhance their effectiveness, in detecting illegal activity at sea;

Based on the principles of international law, respect for the sovereign equality of States and in full respect of the freedom of navigation;

Have agreed as follows:

Article 1

Definitions

For purposes of this Agreement,

1. "Government" or "Party" means either the Government of the United States of America or the Government of the Republic of the Marshall Islands;
2. "Governments" or "Parties" means both the Government of the United States of America and the Government of the Republic of the Marshall Islands;
3. "Illicit transnational maritime activity" means illegal activities prohibited by international law, including international conventions to which both the Government of the Republic of the Marshall Islands and the Government of the United States of America are party, but only to the extent enforcement is authorized by the laws of both Parties;
4. "Maritime Administrator" means the Maritime Administrator appointed under the Maritime Administration Act of the Republic of the Marshall Islands;
5. "Suspect vessel" means a vessel in respect of which there are reasonable grounds to suspect that it is engaged in illicit transnational maritime activity.

Article 2

Objective

The objective of this Agreement is to strengthen ongoing cooperative maritime surveillance and interdiction activities between the Parties, for the purposes of identifying and preventing illicit transnational maritime activity.

Article 3

Application of Previous Agreements

Any activity within the scope of the Agreement between the Government of the United States of America and the Government of the Republic of the Marshall Islands Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials by Sea, signed at

Honolulu August 13, 2004, shall be undertaken only in accordance with that agreement.

Article 4

Scope

1. Subject to Article 4.2, the scope of application of this Agreement shall be limited to fishing vessels, go-fasts, and recreational vessels claiming registry or nationality in the Republic of the Marshall Islands.
2. No part of this Agreement shall automatically apply to commercial merchant vessels registered under the applicable laws of the Republic of the Marshall Islands and engaged in foreign trade. If a commercial merchant vessel registered or claiming nationality in the Republic of the Marshall Islands is suspected of illicit transnational maritime activity, the United States Coast Guard shall contact the Government of the Republic of the Marshall Islands immediately and provide, to the extent permissible by U.S. law, all relevant information relating to the suspect vessel so that the Republic of the Marshall Islands may authorize a boarding pursuant to this Agreement.
3. For the purposes of Article 4.2, all relevant information relating to a suspect commercial merchant vessel shall be directed to the Minister of Justice of the Republic of the Marshall Islands. The Minister of Justice may, after review of the information disclosed and in coordination with the Maritime Administrator, authorize a boarding pursuant to this Agreement.
4. In the event that the Republic of the Marshall Islands authorizes a boarding of a commercial merchant vessel under Article 4.2, all other provisions of this Agreement shall apply.
5. The Ministry of Foreign Affairs of the Republic of the Marshall Islands shall be kept informed of all activities carried out under this Agreement.

Article 5

Boardings Conducted with Embarked Officers from the Republic of the Marshall Islands

1. Armed and uniformed officers of the Republic of the Marshall Islands National Police-Sea Patrol (hereafter, "embarked officers") may be

embarked in selected United States Coast Guard law enforcement vessels or aircraft. When embarked, the United States Coast Guard shall facilitate regular communications between the embarked officers and their headquarters in the Republic of the Marshall Islands, and shall provide messing and quarters for the embarked officers aboard United States Coast Guard vessels in a manner consistent with United States Coast Guard personnel of the same rank.

2. Subject to Articles 4.2, 4.3 and 4.4, the embarked officers shall be empowered to grant United States Coast Guard vessels and aircraft, on behalf of the Government of the Republic of the Marshall Islands, authority to:
 - (a) enter the Republic of the Marshall Islands territorial sea to assist the embarked officers to stop, board, and search vessels suspected of violating Republic of the Marshall Islands laws or regulations, assist in the arrest of the persons on board and the seizure of contraband and vessels;
 - (b) assist the embarked officers in performing fisheries surveillance and law enforcement activities to the Exclusive Economic Zone of the Republic of the Marshall Islands, including stopping, inspecting, detaining, directing to port, and seizing fishing vessels in accordance with the national laws and regulations of the Republic of the Marshall Islands;
 - (c) stop, board, and search suspect vessels located seaward of any State's territorial sea and claiming registry or nationality in the Republic of the Marshall Islands to assist the embarked officers in the enforcement of applicable laws and regulations of the Republic of the Marshall Islands; and
 - (d) employ reasonable force to stop non-compliant vessels subject to the jurisdiction of the embarked officers.
3. The embarked officers may assist United States Coast Guard personnel in the conduct of any boarding undertaken pursuant to the authority of the United States of America, including right of visit boardings and boardings authorized by other flag and coastal States, as appropriate.

Article 6
Boardings Conducted without Embarked Officers
from the Republic of the Marshall Islands

1. Whenever United States Coast Guard officials operating in the ocean area south of latitude 40°00' N, east of longitude 130°00' E, north of 50°00' S, and west of 140°00' W, without an embarked officer encounter a vessel used for commercial or private purposes and claiming registry or nationality in the Republic of the Marshall Islands, located seaward of any nation's territorial sea and suspected of illicit transnational maritime activity, by this Agreement, the Government of the Republic of the Marshall Islands, subject to Articles 4.2, 4.3 and 4.4 of this Agreement, may authorize the boarding and search of the suspect vessel and the persons found on board by such United States Coast Guard officials.
2. United States Coast Guard officials shall endeavor to exchange operational information on the detection and location of suspect vessels and shall maintain communication with the Government of the Republic of the Marshall Islands as necessary to carry out the purposes of this Agreement.
3. Reasonable efforts shall be taken to avoid a vessel being unduly detained or delayed. If, however, evidence of illicit activity is found, United States Coast Guard officials may detain the suspect vessel and persons on board seaward of any State's territorial sea pending expeditious disposition instructions from the Government of the Republic of the Marshall Islands.

Article 7
Status Reports

1. Whenever the United States of America conducts a boarding and search pursuant to this Agreement, it shall promptly notify the Republic of the Marshall Islands of the results thereof.
2. Each Party, in compliance with its laws, shall timely report to the other Party, on the status of all investigations, prosecutions, and judicial proceedings and other actions and processes, arising out of the application of this Agreement.

Article 8 Safeguards

Whenever measures take place against a vessel in accordance with this Agreement, the boarding officials shall:

1. Take due account of the need not to endanger the safety of life at sea, including, but not limited to:
 - (a) taking precautions not to unduly hazard the vessel or the vessel's crew while boarding; and
 - (b) taking account of vessel location, to avoid inadvertently endangering other vessels in the vicinity in the course of boarding;
2. Take due account of the security of the vessel and its cargo;
3. Not prejudice the commercial or legal interests of the Republic of the Marshall Islands;
4. Ensure within available means, that any measure taken with regard to the vessel is environmentally sound under the circumstances;
5. Ensure that persons on board are afforded the protections, rights, and guarantees provided by international law and the laws and regulations of the Parties; and
6. Ensure that the master of the vessel is, or has been, afforded the opportunity to contact the vessel's owner, manager, or Flag State at the earliest opportunity and provided the necessary information to file a claim pursuant to Article 14 of this Agreement.

Article 9 Conduct of Officers

Each Party shall ensure that its officers, employees, personnel, or agents acting on its behalf, when conducting boardings and searches pursuant to this Agreement, act in accordance with this Agreement, international law, and accepted international practices.

Article 10

Use of Force

1. All uses of force pursuant to this Agreement shall be in strict accordance with the applicable laws, regulations, and policies of the Party conducting the boarding and applicable international law.
2. Each Party shall avoid the use of force except when and to the degree necessary to ensure the safety of vessels and officers, employees, personnel, or agents acting on its behalf and where the embarked officers or United States Coast Guard officials are obstructed in the execution of their duties.
3. Only force that is reasonably necessary under the circumstances may be used.
4. Embarked officers and United States Coast Guard officials have the inherent right to use all available means to apply force reasonably necessary to defend themselves or others from physical harm.

Article 11

Jurisdiction

In all cases arising in the Republic of the Marshall Islands territorial sea, or concerning Republic of the Marshall Islands flagged vessels seaward of any nation's territorial sea, the Government of the Republic of the Marshall Islands shall have the primary right to exercise jurisdiction over a detained vessel and/or persons on board (including seizure, forfeiture, arrest, and prosecution), provided, however, that the Government of the Republic of the Marshall Islands may, subject to its Constitution and laws, waive its primary right to exercise jurisdiction and authorize the enforcement of United States law against the vessel and/or persons on board.

Article 12

Seizure and Disposal of Assets

Assets seized in consequence of any operation undertaken in the Republic of the Marshall Islands territorial sea pursuant to this Agreement shall be disposed of in accordance with the laws of the Republic of the Marshall Islands. Assets seized in consequence of any operation undertaken seaward of the territorial sea of the

Republic of the Marshall Islands pursuant to this Agreement shall be disposed of in accordance with the laws of the Government exercising jurisdiction. To the extent permitted by its laws and upon such terms as it deems appropriate, one Party may, in any case, transfer forfeited assets or proceeds of such sale to the other Party.

Article 13

Interpretation

Where a question arises in connection with implementation of this Agreement, either Party may request a meeting to resolve the matter. Disputes arising from the interpretation or implementation of this Agreement shall be settled by mutual agreement of the Parties.

Article 14

Claims

If any damage, harm, injury, death, or loss, including loss or damage suffered as a result of a vessel being unduly detained or delayed, is suffered as a result of any action taken by the law enforcement or other officials of one Party in contravention of this Agreement, or any improper or unreasonable action is taken by a Party pursuant thereto, representatives of the Parties shall, without prejudice to any other legal rights which may be available, meet at the request of either Party to resolve the matter and decide any questions relating to compensation.

Article 15

Expenses and Costs

1. Subject to the availability of appropriated funds, costs associated with this Agreement, including costs incurred by the Republic of the Marshall Islands in the event that embarked officers are required to disembark in a country other than the Republic of the Marshall Islands following surveillance activities (but excluding salaries of embarked officers), will be borne by the United States Coast Guard.
2. If any disagreement arises as to the application of this Article, representatives of the Parties shall meet at the request of either Party to

resolve the matter and decide any questions relating to reimbursement of costs and expenses.

Article 16

Evaluation

The Parties agree to consult as necessary to evaluate the implementation of this Agreement and to consider enhancing its effectiveness. The evaluation shall be carried out at least once a year.

Article 17

Effect on Rights, Privileges, and Legal Positions

Nothing in this Agreement shall:

1. alter the rights and privileges due any person in any administrative or judicial proceeding conducted under the jurisdiction of either Party;
2. prejudice the position of either Party with regard to international law;
3. preclude either Government from otherwise agreeing on operations or other forms of cooperation to suppress illicit transnational maritime activity; or
4. supersede any bilateral or multilateral agreement or other cooperative mechanism concluded by either Government.

Article 18

Amendments

Amendments to this Agreement may be made at any time by agreement of both Governments in writing.

Article 19

Duration and Termination

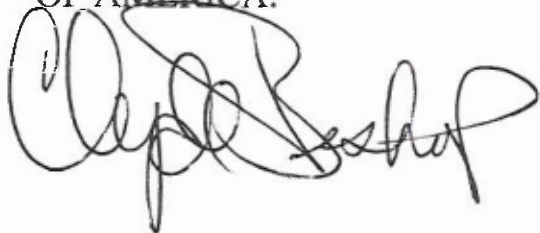
This Agreement shall enter into force upon signature by the Parties. This Agreement may be terminated at any time by either Party upon written notification

to the other Party through the diplomatic channel. Such termination shall take effect thirty days from the date of notification. This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings arising out of actions taken pursuant to this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at *Manila* this *5th* day of *Aug.*, 2008, in duplicate, both texts being *equally* authentic.

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA:



FOR THE GOVERNMENT OF THE
REPUBLIC OF THE MARSHALL
ISLANDS:

